IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

MFA.No. 277 of 2003()

OPMV.728/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA

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APPELLANT: ADDL.4TH RESPONDENT IN THE CLAIM PETITION:

LALI SEBASTIAN @ LALI CHERIAN,
CHAMPAPPILLIL HOUSE, PIPE LINE ROAD,
COCHIN UNIVERSITY P.O., COCHIN-22.

BY ADV. DR.SEBASTIAN CHAMPAPPILLY
SRI.ANTONY M. AMBAT
SRI.M.G.DEVIPRASADAN

RESPONDENTS: CLAIMANT IN THE CLAIM PETITION:

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1. PRASANNAKUMAR, S/O. PRABHAKARA PANICKER
AGED 45 YEARS, RESIDING AT KALAYIL HOUSE,
KOMBAYAR KARA, PARATHODU VILLAGE,
IDUKKI DISTRICT.

2. T.T. JOHN, S/O. LUCAS,
THAZHATHUKUDIYIL HOUSE,
UPPUKANDOM P.O., IDUKKI DISTRICT.

3. MADHUKUMAR @ MADHU, S/O. BHASKARAN NAIR,
AGED 24 YEARS, MADHUNIVAS HOUSE,
KOMBAYAR KARA, PARATHODU VILLAGE, IDUKKI DIST.

* 4. UNITED INDIA INSURANCE COMPANY LTD., (DELETED)
REPRESENTED BY ITS BRANCH MANAGER,
BRANCH OFFICE, DAIVASAHAYAM BUILDING,
K.K. ROAD, PONKUNNAM.

(THE NAME OF THE 3RD RESPONDENT IS DELETED FROM
PARTY ARRAY AT THE RISK OF THE APPELLANT VIDE
ORDER DATED 1.6.2007 IN I.A.NO.1029/2007)

BY ADV. SRI.S.K.MURALEEDHARA KAIMAL
SRI.SREELAL N.WARRIER
SMT.P.K.SANTHAMMA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.277 of 2003

Dated this the 19th July, 2007.

J U D G M E N T

A person in whose name a jeep bearing Registration No.KLE 4668 stood registered on 24.12.1995 is the appellant. The said vehicle met with an accident on 24.12.1995 at about 10.30 p.m. The first respondent who was travelling in the vehicle sustained injuries. He filed a petition claiming compensation impleading the registered owner, driver and insurer of the vehicle, claiming a compensation of Rs.60,000/=. The third respondent, who was the driver of the vehicle, was subsequently removed from the party array. It was alleged that the accident occurred due to the negligence of the driver, and the second respondent was the owner of the vehicle, at the relevant point of time. The owner though appeared did not file any written statement. The driver remained ex parte. The Insurer filed a written statement contending that there was no negligence on the part of the driver. It was admitted that the vehicle was insured as a private vehicle and the policy issued was an act only policy. It was also contented that the first respondent was a passenger, and as such, he was not entitled to get any compensation. It was further

contented that the registered owner of the vehicle is the appellant and the second respondent, driver, was not having any valid driving licence, on the date of accident. The Tribunal found that on the date of accident, the Driver was not in possession of a valid driving licence. It also found that the company was not liable to indemnify the insured. But the Company is liable to pay the compensation awarded and recover the same from the insured. The Tribunal held that the first respondent is entitled to get an amount of Rs.10,000/= as compensation. Challenging that part of the award, the appellant, who was subsequently impleaded as additional 4th respondent, has filed this appeal.

2. It is seen that the 4th respondent, Insurer, has filed a written statement contending that the vehicle was insured in the name of one Lali Sebastian, who is the appellant herein. Thereafter, the petitioner in the original petition filed I.A.No.946/2001 for impleading the appellant herein as the additional respondent. A notice was issued to her, which was returned unserved back to the Tribunal. The Tribunal ordered fresh notice to the appellant by affixture. There is nothing on record to show that steps were taken for affixture of notice, and the notice was really affixed. Even in the

Proceeding Paper, there is no order of the Tribunal to the effect that appellant was served with notice, or entered appearance. But the cause title of the order shows that somebody had made a statement that one Advocate Sri.Benny Joseph had taken notice for the appellant. Hence, in the cause title that name was shown against the appellant. But nobody has filed any valalath for the appearance. Appellant has not entered appearance or filed any written statement. The appellant had produced documents before this Court to show that she sold the vehicle to one Ratnakar S Kamath, Alappuzha, as early as on 29.10.1993, and reported the transfer to the Registering Authority at Kakkanad. She had also produced documents, acknowledgment cards and also the postal receipts, to show that she had informed the Registering Authority about the transfer. The Tribunal proceeded on the assumption that the appellant was the owner, on the date of accident.

3. It is true that the policy of Insurance stands in the name of the appellant. Section 157 of the Motor Vehicles Act provides that when there is a transfer, the policy certificate will also stand transferred in the name of the purchaser. The contention put forward by the first respondent-petitioner was that the second respondent was

the owner of the vehicle, and it was his driver who caused the accident. Merely because a person was the registered owner of the vehicle, as per the records, he cannot be made liable, unless there is material to show that the driver who was responsible for the accident was appointed by him.

4. The learned counsel appearing for the appellant had relied on the decisions reported in **Kunjuraman v. Saramma** (1986 KLT 742); **Aliyar Kunju v. Subair Khan** (1984 KLT 268); **Said Mohammed v. Rema** (1995 (2) KLT 343); and **Sumathy v. Raghavan** (1996 (2) KLT 1018), and argued that the motor vehicle, being a movable, the sale is under the Sale of Goods act, and even if change of ownership is not noted in the R.C.Book, the sale will be complete and thereafter the transferee will be the owner of the vehicle. Tribunal without even verifying the records as to whether the appellant was served, passed an award against her. The impugned award is unsustainable. So, the matter requires re-consideration.

In the result, the appeal is allowed. The award under challenge is hereby set aside. The matter is remanded to the Tribunal for fresh disposal, in accordance with law. The Tribunal is directed to

take O.P.(M.V.) 728/1996 back to file and dispose of the same afresh. The parties shall be given an opportunity to file written statement and adduce evidence, if so advised. The parties shall appear before the Tribunal on 24-8-2007. There shall be a direction to the Tribunal to make every endeavor to dispose of the matter, as expeditiously as possible.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No. 277 of 2003

J U D G M E N T

Dated: 19th July, 2007.